

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

JAMES FOX,

Plaintiff,

vs.

Case No. 2013-4808-CK

OAKWOOD SYNTHETIC TURF, LLC, a
Michigan limited liability company, OAKWOOD
INSTALLATIONS, INC., a Michigan corporation,
and JAMES VAN HUSEN,

Defendants.

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OPINION AND ORDER

Defendants have moved for summary disposition pursuant to MCR 2.116(C)(7) and (10) and sanctions pursuant to MCR 2.114. Plaintiff has filed a response and requests that the motion be denied.

Factual and Procedural History

This matter arises out of an alleged oral contract between Plaintiff and one or more Defendants pursuant to which Plaintiff agreed to act as a manufacturer's representative in exchange for a 5% commission on any sales made as the result of Plaintiff's efforts. On December 4, 2013, Plaintiff filed his complaint in this matter against Defendants alleging breach of contract (Count I) and alter ego (Count II). Defendants have now moved for summary disposition in their favor pursuant to MCR 2.116(C)(7) and (10) and for sanctions pursuant to MCR 2.114.

Standards of Review

MCR 2.116(C)(7) permits summary disposition where the claim is barred because of release, payment, prior judgment, immunity granted by law, statute of limitations, statute of frauds, an agreement to arbitrate, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action. In reviewing a motion under MCR 2.116(C)(7), the Court accepts as true the plaintiff's well-pleaded allegations, construing them in the plaintiff's favor. *Hanley v Mazda Motor Corp*, 239 Mich App 596, 600; 609 NW2d 203 (2000). The Court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed or submitted by the parties when determining whether a genuine issue of material fact exists. *Id.* Where a material factual dispute exists such that factual development could provide a basis for recovery, summary disposition is inappropriate. *Kent v Alpine Valley Ski Area, Inc*, 240 Mich App 731, 736; 613 NW2d 383 (2000). Where no material facts are in dispute, whether the claim is barred is a question of law. *Id.*

A motion under MCR 2.116(C)(10) tests the factual support of a claim. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). In reviewing such a motion, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties in the light most favorable to the party opposing the motion. *Id.* Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id.* The Court must only consider the substantively admissible evidence actually proffered in opposition to the motion, and may not rely on the mere possibility that the claim might be supported by evidence produced at trial. *Id.*, at 121.

Arguments and Analysis

“A party claiming a breach of contract must establish by a preponderance of the evidence (1) that there was a contract, (2) that the other party breached the contract and, (3) that

the party asserting breach of contract suffered damages as a result of the breach.” *Miller–Davis Co v Ahrens Const, Inc (On Remand)*, 296 Mich.App 56, 71; 817 NW2d 609 (2012). In addition, a valid contract must be supported by consideration, which is a bargained-for exchange. *Gen Motors Corp v Dept of Treasury, Revenue Division*, 466 Mich 231, 238; 644 NW2d 734 (2002).

In this case, Defendants contend that no contract existed between any of them and Plaintiff and that even if a contract existed it was not supported by consideration. In support of their positions, Defendants rely on the affidavit of Defendant Jim Van Heusden. Defendant Van Heusden testified that he did not enter into a contract with Plaintiff individually or on behalf of either Defendant entity. (*See* Defendants’ Exhibit 1.) Further, Defendant Van Heusden testified that Plaintiff had no involvement with Defendant Oakwood Synthetic Turf, LLC’s successful bid to install turf at the Taylor Sportsplex. (*Id.*) While Defendant Van Heusden concedes that Plaintiff repeatedly contacted him in an attempt to recover commissions he thought he was owed, and that he ultimately paid Plaintiff \$2,500.00 labeled “Commission”, Defendant Van Heusden testified that the payment was made to settle Plaintiff’s claim.

In his response, Plaintiff contends that a contract existed, that the \$2,500.00 was paid pursuant to the contract, and that there is a remaining balance owed to him under the contract. However, Plaintiff has failed to provide any evidence in support of his position. When a motion under subrule (C)(10) is made and supported by documentary evidence on the record an adverse party may not rest upon the mere allegations or denials of his or her pleading, but must, by affidavits or as otherwise provided in this rule, set forth specific facts showing that there is a genuine issue for trial. MCR 2.116(G)(4). In his response, Plaintiff has failed to provide any

evidence in support of his position, much less documentary evidence that satisfies the requirements of the court rule. Consequently, Defendants' motion must be granted.

In addition, Defendants seek sanctions pursuant to MCR 2.114(E) & (F) on the ground that Plaintiff's claims are frivolous. While the Court is convinced that their motion must be granted based on Plaintiff's failure to properly support his response to the instant motion, the Court is not satisfied that Plaintiff's claims are "frivolous" as defined by MCL 600.2591(3)(a). As a result, the Court is not persuaded that sanctions are appropriate in this matter. Consequently, Defendants' request for sanctions is denied.

Conclusion

Based upon the reasons set forth above, Defendants' motion for summary disposition is GRANTED. Defendants' request for sanctions is DENIED. In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order resolves the last claim and closes the case.

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: May 8, 2014

JCF/sr

Cc: *via e-mail only*
Robert H. Fortunate, Attorney at Law, rfortunatelaw@comcast.net
Thomas P. Nelson, Attorney at Law, thomas@sawpc.com